

Remarks

Amendment to Specification

The Examiner objected to the amendment to the specification submitted in the Reply of March 16, 2006. Specifically, the Examiner stated that the amendment to paragraph 0030 contained new matter as it introduced the term “drilled” in the amended paragraph. Applicant has amended paragraph 0030 by deleting the language inserted in the previous reply, thereby removing the new matter. Applicant respectfully submits that this amendment overcomes the objection.

Allowed Subject Matter

The Examiner rejected Claim 18 as being dependent on a rejected base claim, but stated that it would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Claim 18 depends directly from Claim 11, now cancelled, which itself depended directly from Claim 1. New independent Claim 20 has been written to include all the limitations of Claims 1, 18, and cancelled Claim 11. Applicant respectfully requests allowance of new Claim 20.

Objection to Claim 19

The Examiner objected to Claim 19 as containing an incorrect dependency. Applicant has amended Claim 19 to correctly depend from Claim 16. Applicant respectfully requests reconsideration of the objection to Claim 19.

The §103 (a) Rejections of Claim 1-17 and 19

The Examiner rejected Claims 1-17 and 19 under 35 U.S.C. §103 (a) as obvious over U.S. Patent No. 5,340,630 to Tripp (“Tripp” or “the Tripp patent”) in view of U.S. Patent No. 4,477,059 to Willis (“Willis” or “the Willis patent”). Applicant has amended independent Claims 1, 15, and 16. Applicant has cancelled Claims 11 and 17 thereby rendering the rejection of those claims moot. The limitations of Claims 11 and 17 have been included in amended Claims 1 and 16, respectively. Applicant respectfully traverses the rejection of these claims as amended and requests reconsideration.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. In addition, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant has amended Claims 1 and 16 to claim a construction material that includes a plurality of flexible strips wound upon one another, securing means for securing the strips, at least one transverse hole passing through the wound plurality of strips, and at least one hollow tube disposed through at least one of the transverse holes. The hollow tube(s) each have flared ends that bind the plurality of wound strips. Claim 15 claims a method of producing a pole from strips formed from the sidewalls and tread of a tire and has been amended to include the step of passing at least one hollow tube through at least one transverse hole with the hollow tube(s) each having flared ends that function to bind the wound strips. Support for these amendments is found in paragraph 0030 of the original specification which discloses that the ends of a tube that is passed through the wound strips can be flared and that the flared ends can bind the plurality of strips. (See paragraph 0030 stating, "The flared hollow tubes further serve to bind the layers of wound tire strips together...")

Applicant takes note of the Examiner's statement that Tripp does not disclose a transverse hole. The Examiner points to the Willis patent as providing a suggestion to put a hole through the helically wound strips of Tripp. However, both the Tripp and Willis patents fail to suggest the claimed invention which includes a tube passed through the wound strips and having flared ends to hold the bindings together.

Applicant respectfully submits that the Willis patent fails both structurally and functionally to teach or suggest the holes or hollow tubes claimed in amended Claims 1, 15, and 16. Structurally, the locations of the holes in the Willis patent are in the fence posts, not in the fence rails. Applicant respectfully submits that it is the fence rails that are analogous to the

construction material claimed in the rejected claims. Applicant respectfully points to Figure 13 of the application showing horizontally stacked rolls of the claimed construction material with the tubes 25 available to receive poles or other anchors 33. This is also described in paragraph 0034 of the application. Applicant respectfully points out that the anchors 33, analogous to the vertical poles in Willis, have no transverse holes nor is there any suggestion to provide those holes. Moreover, the connectors taught in Willis do not possess flared ends. In fact, if flared ends were included on the Willis connectors, they would not function as taught in Willis. If the connectors possessed flared ends, those ends would prevent the vertical posts from sliding along the rails to be positioned to hide the connecting joints between the apertures of the post. (See Willis col. 2, lines 33-37 stating, "The post 21-2 then is slid along rails 23-2 (to the right as seen in FIG. 2) to locate the joints between rails 23-2 and 23-3 within the apertures 25 of the post 21-2 such that the joints cannot be seen.") Therefore, it can be seen that the combined Tripp and Willis patents fail to suggest a hollow tube having the structure claimed in Claims 1, 15, and 16.

Functionally, Willis makes no teaching or suggestion to use the tube passing through the transverse hole as a binder to bind the strips of the construction material itself as is claimed in Claims 1, 15, and 16. Willis only suggests using the unflared hollow tube as a connector to connect two different fence rails together end to end. In addition, Applicant respectfully submits that it would be difficult for the Willis patent to teach a person of ordinary skill to bind or secure the materials of a single post or rail using a flared tube as it only discloses the use of fiberglass fence posts and rails which do not require such binding techniques.

Therefore, the combined Tripp and Willis patents fail to establish a *prima facie* case of obviousness against amended Claims 1, 15, and 16 as they fail to teach or suggest a flared binding tube that passes through a transverse hole in the wound material and functions to hold the windings together. In addition, Applicant respectfully submits that the combined references fail to teach or suggest placing any holes in the claimed construction material as Tripp does not suggest holes of any type and Willis only teaches holes in the devices that support the claimed construction material, not the claimed construction material itself. Thus, the combined references fail to teach or suggest all of the structural and functional elements of the rejected

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claims and they fail to provide motivation to provide a binding fastener of any type that passes through the windings and functions to hold the windings themselves together. Applicant respectfully requests reconsideration and allowance of Claims 1, 15, and 16.

"If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Claims 2-10, 12-14, and 18 depend directly or indirectly from Claim 1 and Claim 19 depends directly from Claim 16. Thus, they incorporate all the limitations of those respective claims. Because, as discussed above, the Tripp and Willis patents fail to render obvious Claims 1 and 16, they also fails to render obvious Claims 2-10, 12-14, and 18 and Claim 19, respectively. Applicant respectfully requests the removal of the rejections of Claims 2-10, 12-14, and 18 and Claim 19 and allowance of those claims.

Conclusion

Applicant respectfully submits that the present application is now in condition for allowance, which action is courteously requested. The Examiner is invited and encouraged to contact the undersigned attorney of record if such contact will facilitate an efficient examination and allowance of the application.

Respectfully yours,



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